

Thu Aug 26 14:54:57 2004

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Aug-26-04 11:14am From: JOHNSTON & ASSOCIATES

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ORIGINAL

August 23, 2004

RECEIVED

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20544

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Federal Communications Commission
Office of the Secretary

Re: Release of "Best Practices" during the Week of the Opening of the National Museum of the American Indian

Dear Chairman Powell:

USET greatly appreciates the extraordinary commitment that you have made to tribal consultation on the National Historic Preservation Act issues that were the subject of our meeting with you two years ago. I can say without hesitation that working with the FCC during this period has been one of the most satisfying experiences of my time as a tribal leader.

As a result of your commitment, and the very diligent efforts of the FCC and USET drafting teams, we have completed, pursuant to the memorandum of understanding that you and I signed at the USET conference in February 2004, a "Best Practices" document that will provide critically needed guidance to Tribes and FCC applicants regarding tower construction, tribal sacred sites and the requirements of Section 106 of the National Historic Preservation Act.

Although the result is excellent, the process of developing the Best Practices has been lengthy. In the meantime, towers continue to be constructed with minimal or no tribal consultation in areas of great sensitivity to tribes. Until the Best Practices document is released, there will continue to be great confusion for all parties and a continued risk to irreplaceable tribal sacred sites. The Best Practices needs to be released as soon as possible.

For several months, we have delayed final completion of the Best Practices in the hope that the proposed Nationwide Programmatic Agreement currently under consideration by the Commission would be adopted and inconsistencies, if any, between the two documents could be addressed. I do not know when the NPA will be finally adopted, but I do know that the situation in Indian Country with regard to unreviewed cell tower construction continues to be very troubling. Several tribes have recently approached USET about their continuing struggles in working with industry. They are greatly interested in the "Best Practices" document. Formal release of the Best Practices will address their concerns, resulting in support from other tribes and tribal organizations, and encouraging tribes to sign up for the Tower Construction Notification System, which is an integral part of the Best Practices but in the absence of that document, provides little actual benefit to tribes. While we do not know the final text of the NPA, we believe that the guidelines in the Best Practices will largely fit within its framework. However, let me repeat what we have told your staff -- if the Best Practices should conflict in any way with the Nationwide Programmatic Agreement, USET is committed to immediate amendment of the Best Practices. In the meantime, the time has come to move forward with the Best Practices.

The Best Practices document not only represents the best thinking of the FCC and USET, but also reflects the input of other tribal organizations, including the National Congress of American Indians and the

"Because there is strength in Unity"

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Chairman Powell
August 23, 2004
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National Association of Tribal Historic Preservation Officers, with whom USET consulted frequently. In addition, the Best Practices were substantially amended to reflect input from industry, which was extensive.

The Best Practices represent a high water mark in the Federal government's relationship with Indian tribes. We would like to highlight this achievement during the week of the opening of the National Museum of the American Indian on the National Mall on September 21, 2004. The Best Practices share something in common with the Museum - a concern for preserving tribal culture and history. The opening of the museum will bring more Native people, including tribal leaders, to DC than at any other time in history. National media interest will be focused on Native issues. For this reason, I strongly urge your final approval of the Best Practices as soon as possible with the goal of holding an event marking their release during this week to take advantage of this opportunity.

Let me close by praising the outstanding work of the FCC drafting team, including Kris Monteith, Jeff Steinberg, Frank Stillwell, Geoffrey Blackwell, Dan Abeyta and Amos Loveday. Throughout our discussions, they displayed the highest standards of professionalism, making great efforts to understand the tribal perspective, while also diligently helping us to understand the FCC's perspective. As a result, I believe that we have developed a truly seminal and important document that will serve as a model for Federal-Tribal cooperation.

Although the USET board has already passed a resolution recognizing the exemplary commitment of the FCC to work with USET on a government-to-government basis and expressing our great appreciation to you for your personal commitment, it bears repeating that your support for this process truly makes you a "Friend of Indian Country."

Thank you for your efforts, energy and leadership. It has and will continue to make a difference in a way that will benefit generations of Americans, whether Native or not.

Sincerely,



Keller George
President

CC:

K. Dane Snowden, Chief, Consumer and Governmental Affairs Bureau
John B. Muleta, Chief, Wireless Telecommunications Bureau